MALAYAN UNITED FINANCE BHD.

v.

ADSONII (M) SDN. BHD.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[ORIGINATING SUMMONS NO. 31-451-85]
4 JUNE 1990

LAND LAW: *Order of sale under s. 256 - Reserve price - Whether Chargee allowed to bid at auction.*

CIVIL PROCEDURE: *Jurisdiction of Senior Assistant Registrar - Principle of functus officio - Applicability to consequential orders - Order 32 r. 9 Rules of the High Court 1980.*

The Senior Assistant Registrar made 2 consequential orders following an order for sale under s. 256 of the National Land Code (NLC) 1965. Firstly, she had maintained the reserve price for the sale of the land at RM1,000,000 (there having been previously three abortive auctions) and secondly she ordered that the plaintiff/chargee be at liberty to bid at the auction. The defendant chargor appealed that decision.

Held:

[1] Taking into account the facts and circumstances of this case, mainly the valuation reports and the affidavit of the chargor, the Court, in the exercise of its discretion increased the reserve price from RM1 million to RM1.3 million.

[2] The order permitting the chargee to bid at the auction was an order consequential to the order for sale made under s. 256 of the NLC. The principle of *functus officio* cannot possibly apply to consequential orders. This consequential order was well within the jurisdiction of the Senior Assistant Registrar - see O. 32 r. 9 Rules of the High Court 1980.

[Appeal allowed on question of reserve price. Appeal dismissed on question of SAR's order of plaintiff being allowed to bid at auction.]

Legislation referred to:
National Land Code 1965, s. 256
Rules of the High Court 1980, O. 32 r. 9

For the plaintiffs - Teoh Soo Bee; M/s. K. Ahmad & Yong
For the defendants - R. Rajasingam; M/s. Jayaraman & Ong

JUDGMENT

Edgar Joseph Jr J:

This was a defendant/chargor's appeal from the decision of the Senior Assistant Registrar given on 3 November 1969 whereby she made various consequential orders following an order for sale under s. 256 of the National Land Code 1965 ('the Code') made by the Judge upon the application of the plaintiff/chargee. Though the notice of appeal was widely drawn, so that it was not clear which of the consequential orders was being appealed against, it became clear, as soon as the argument proceeded, that what was being contested was the reserve price for the sale of the land, the subject of the charge, which the Senior Assistant Registrar had maintained at RM1,000,000 (there having been previously three abortive auctions on 2 October 1987, 11 May 1988 and on 4 January 1989) **and** also the order giving the plaintiff/chargee liberty to bid at the auction.

Before me, it was argued by the Counsel for the chargor/defendant that the reserve price should be increased to RM1,300,000 having regard to a Valuation report by Chartered Valuers, dated 15 February 1990, being Exhibit CAB1, wherein the opinion is expressed that the value of the charged land for "corporate purposes" and free from all encumbrances, as at 15 February 1990, is RM1,300,000.

Although Counsel for the chargee/plaintiff had pointed out that at the last two abortive auctions there was not a single bidder, that was a considerable time ago and since then, as the chargor/applicant has pointed out in her affidavit affirmed to on 27 February 1990 (Encl. 49), "the property market is now on the uptrend." Moreover, there was also the uncontradicted and up to date Valuation Report Ex. CAB1. In these circumstances, in the exercise of my discretion, I allowed the appeal from the Senior Assistant Registrar's decision by increasing the reserve price from RM1,000,000 to RM1,300,000.

As for the order made by the Senior Assistant Registrar permitting the chargee/plaintiff to bid at the auction, I consider that this was merely an order consequential to the order for sale made under s. 256 of the Code by me 21 November 1985, and so well within the jurisdiction of the Senior Assistant Registrar to make. The principle of *functus officio* cannot possibly apply to consequential orders. The Senior Assistant Registrar, be it noted, has very ample powers which are spelt out in O. 32 r. 9, of the Rules of the High Court 1980, the effect of which is that the jurisdiction of the Registrar is equated to that of a Judge in chambers except matters which the Chief Justice may direct or which under the rules may only be transacted by a Judge; neither of these exceptions was relevant to the present case. Moreover, it should not be overlooked, in making the order permitting the chargee/applicant to bid at the auction, the Senior Assistant Registrar was merely acting as a delegate for the Judge.

Accordingly, the order made by the Senior Assistant Registrar giving the chargee/applicant liberty to bid was affirmed.

Also found at [1990] 2 CLJ 254